

REMARKS

Claims 1-4, 10 and 17 are pending. No new matter has been added by way of the present amendment. For instance, claim 1 has been amended to remove the recitation of "comprising the amino acid sequence" and to include textual subject matter taken from claim 5. Claims 5-9, 11 and 16 have been cancelled. New claim 17 is supported by originally filed claims 6-9 and the present specification at page 22, lines 3-12. Accordingly, no new matter has been added.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 6-9 and 16 under 35 U.S.C. § 112, first paragraph, asserting that there is insufficient *in vivo* data to show the effectiveness of a medicament in treating diseases relating to cell death. Applicants respectfully traverse.

The present specification provides a thorough discussion of the cell death inhibitory effects of the present compounds. However, in an effort to further prosecution, Applicants have cancelled claims 6-9 and 16. Please note that although Applicants have cancelled these claims, the presently pending product claims, for instance, claim 1, are considered enforceable for the use of

the presently isolated/purified peptide for any use. Applicants are not acquiescing that the Examiner is correct by the cancellation of these claims.

Accordingly, the Examiner is respectfully requested to withdraw this rejection.

Issues under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-4, 6-10 and 16 under 35 U.S.C. § 102(b) as being anticipated by Hill et al., Proc. Natl. Acad. Sci. 1993; 90(2):537-541, hereinafter referred to as Hill.

The Examiner asserts that Hill discloses an isolated polypeptide that comprises amino acid sequence consisting of 103 amino acids at the C-terminal and selenoprotein P as well as the particular fragments of SEQ ID NOs:1 and 2. Applicants respectfully traverse.

The Hill reference discloses only an amino acid sequence from the polypeptide of selenoprotein P deduced from the nucleotide sequence. There has been no isolation and/or purification of the particular peptides of the present invention. Nonetheless, the Examiner appears to be interpreting claim 1 as open and thus appears to believe that the disclosure of the entire sequence of selenoprotein P anticipates the present claims.

Applicants disagree and point out that the present claims require a peptide having cell death-inhibitory activity consisting of 103 amino acid residues from the C-terminal of selenoprotein P. Further, the isolated or purified peptide according to the present invention has been described as one which corresponds to the bands at 3 to 4 kDa, 7 to 9 kDa and 10 to 12 kDa in SDS-PAGE under reductive conditions. This is clearly not the full selenoprotein P allegedly disclosed by Hill. Thus, there is no anticipation based upon Hill. Reconsideration and withdrawal of this rejection are respectfully requested.

The Examiner has also rejected claim 11 under 35 U.S.C. § 102(b) as being anticipated by Sandstrom et al., Proc. Natl. Acad. Sci. 1993; 90(10):4708-12, hereinafter referred to as Sandstrom. Applicants respectfully traverse. Claim 11 has been cancelled, thus, this rejection is moot. Reconsideration and withdrawal thereof are respectfully requested.

In view of the above, Applicants respectfully submit that the present claims are in condition for allowance. Reconsideration and withdrawal of all outstanding rejections are respectfully requested.


If the Examiner has any questions or comments, please contact Craig A. McRobbie, Registration No. 42,874 at the offices of BIRCH, STEWART, KOLSCH & BIRCH, LLP.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) respectfully petition(s) for a three (3) months extension of time for filing a reply in connection with the present application, and the required fee of \$1,020.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By  #42.874
f Marc S. Weiner, #32,181

MSW/CAM/jao
0020-4867P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000